IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 09.08.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Writ Appeal Nos. 1940, 1941, 1942, 1943, 1944, 1945, 1952, 1953 of 2002

Writ Petition Nos. 21576, 21577, 21578, 21873, 21874, 21875, 22014, 22253, 22566, 22567, 22568, 22580, 24613, 24614, 24615, 24616, 24617, 24618, 24697, 24698, 24699, 24700, 24701, 24702, 24709, 24710, 24711, 24762, 24763, 24797, 24798, 24799, 24899, 24900, 24975, 24976, 24977, 24986, 24987, 21824, 21825, 21826, 32784, 32785, 33045, 33046, 34708 of 2002

and

WAMP Nos. 3326, 3327, 3328, 3329, 3330, 3331, 3336, 3337, 3862, 3725 of 2002 and 48768 of 2002

1. The State of Tamil Nadu,
rep. by its Secretary,
Higher Education,
Secretariat, Chennai 600 009.

2. The Director of Technical Education,
Chennai 600 025.

....Appellants in WA.1940 to 1945/2002.
RR.2 and 3 in WA.1952 and 1953/2002.
Respondents 1 and 2 in WP.21576, 21577, 21578, 21873 to 21875, 22253, 22566, 22567, 22568, 22580, 24613 to 24616, 24617, 24697 to 24702, 24709, 24711, 24762, 24763, 24975 to 24977, 24797 to 24799, 24899, 24900, 21825, 21826, 32784, 32785, 33045, 33046/2002.
Respondents 1 and 4 in WP.24986 and 24987/2002
Respondents 1 and 3 in WP.34708/2002.

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V.S.B.Educational Trust
rep. by its Chairman
V.S.Balasamy
258/204, Dharapuram Road,
Kangeyam 638 701
Erode District ..Petitioner in WP 21576 to 21578/2002

Infant Jesus Educational Trust
represented by its Managing Trustee
B.Stephen,
6/1, Nattu Subbaraya Street,
Mylapore, Chennai 600 004. ..Petitioner in WP 21873/2002

Asan Memorial Association
Cochin House, Andersan Road,
Chennai -8, rep. by its General Secretary
Sr. A.K.Gopalan ..Petitioner in WP 22014, 22580/2002

Narayana Gum International
Institute of Science & Technology
Trust,Chitadaru, Majalumoodu,
Arumana, Kanyakumari District... Petitioner in 22253/2002

K.T.a. & G.R.S.Educational Trust
rep. by its Chairman,
K.T.Anbazhagan,18A, Kattur Village
Pudupet Post, Tirupattur Taluk,
Vellore District. ..Petitioner in WP 22566/2002
22567,22568/2002

Sivaraja Ramalingam Trust rep.
by its Chairman and Managning Trustee
Mr.R.Thiagarajan,
No.12, I Street, III floor
Nandanam Extension, Chennai 600 035. ..Petitioner in WP 24613,
24614, 24615/2002

Sri Jayaram Educational Trustee
rep. by its Managing Trustee
Thiru A.Sekar,
No.78, II Street, Seetharam Nagar,
Cuddalore 607 001. ..Petitioner in WP 24616,
24617,24618/2002

Ayanavaram Education Trust
represented by its Chairman K.Moosa
17, Officer's Colongy, Ayanavaram
Chennai 600 023 ..Petitioner in WP 24697 to
24699/2002

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Rajiv Gandhi Memorial Education Charitable Trust,
represented by its Managing Trustee P.Mane,
16-B, Rajarathinam Street, Kilpauk, Chennai -600 010
..Petitioner in WP 24700 to 24702/2002

Sri Padmavathi Balaji Educational Trust
represented by its Managing Trustee
G.Gowri Shankar,
2, Subbraya Avenue, Alwarpet,
Chennai 600 018 ..Petitioner in WP 24709 to 24711/2002

R.V.Educational Trust,
Rajakkamangalam
West Junction,
Rajakhamangalam Post
Kanyakumari District 629 502 rep.
by its Managing Director ..Petitioner in WP 24762 & 24763/2002

Swamy Educational Trust
rep. by its Managing Trustee
N.Vallikannu
4-A, First Main Road,
New Colony, Chrompet,
Chennai 600 044 ..Petitioner in WP 24797 to 24799/2002

Annai Ammani Ammal
Educational and Charitable Trust,
rep. by its Managing Trustee
Dr.Shivanraj, 37/38, Pulla Avenue,
Shenoy Nagar, Chennai -600 030. ..Petitioner in WP 24899 & 24900/2002

Er.Perumal Manimegalai Telugu
Minority Educational & Chairtable Trust
rep. by its Secretary & Trustee P.Kumar,
16/2, Vasantha Nagar, Bye Pass Road,
Opp.to Arunagiri Complex, Hosur,
Dharmapuri District 635 409. ..Petitioner in WP 24975 to 24977/2002

S.N.R.Sons Charitable Trust
395 Sarojini Naidu Road,
Sidhapudur, Coimbatore 641 044
rep. by Power Agent T.K.Ravi ..Petitioner in WP 24986 & 24987/2002

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Paramaswari Palanisamy Charitable
Turst, represented by its Chairman,
K. Paramasivam , 128 Bhavani Road,
Erode. 638 004. ... Petitioner in
W.P.21824/2002 to 21826/2002

V.P. Muthiah Pillai,
Meenakshi Ammal Trust,
rep by its Managing Trustee
V.P.M. Shankar,
4d North Car Street,
Srivalliputhur 626 125
Virudhunagar District ... Petitioner in
W.P.32784/2002 & 32785/2002

Sri. S.N.S. charitable Trust
rep by its Managing Trustee
14, V.c.S. Nagar,
G.N. Mills, Port,
Coimbatore 641 029 ... Petitioner in W.P.33045,
33046/2002

Tirunelveli Diocese Trust Association
CSI rep by its Bishop Bishop's stowe
16 North Highground Road,
Palayamkottai, Tirunelveli District ... Petitioner in
W.P.34708/2002

Vs.

1. V.S.B.Educational Trust,
rep. by its Chairman
V-S. Balasamy
258/204, Dharapuram Road,
Kangeyam 638 701
Erode District ...First Respondent in WA.1940 TO
1945/2002, 1952 AND 1953/2002.

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2. The Anna University
rep. by its Registrar,
S.P. Road,
Chennai 600 025.

3. The Secretary,

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Tamilnadu Engineering Admissions,
Anna University,
Chennai 600 025.

4. The Centre for Engineering Partnership
rep. by its Director,
Anna University, Chennai 600 025.
...Respondents 2 to 4 in WA.1940 to 1945/2002.
Appellants 1 to 3 in WA.1952 to 1953/2002
Respondents 3 to 5 in WP.21576 to 21578, 21873 to 21875, 22566 to 22568, 24613 to 24617, 24697 to 24702, 24709 to 24711, 24762, 24763, 24797 to 24799, 24899, 24900, 24975 to 24977, 21825, 21826, 32784, 32785, 33045, 33046/2002. R.1 Nil Respondents 2,3 and 6 in WP.22580/2002 Respondents 5 and 3 in WP.24986 & 24987/2002 R.1 in WP.22014/2002, Respondents 1 and 2 Nil and R.3 in WP.22253/2002 & R.2 in WP.34708/2002.

Paramasivam Palanisamy
Charitable Trust
rep by its Chariman
K. Paramasivam,
128 Bhavani road,
Erode- 638 004. ... First Respondent in W.A.1943/2002 to 1945/2002

2. The University of Madras
Rep by its Registrar,
Chepauk, Chennai-5.

3. The Secretary
Tamilnadu Engineering Advisor 2002
Anna University, Guindy
Chennai- 600 025.

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4. The All India Council for
Technical Educaton rep
by its Advisor (E & T)
Indira Gandhi Sports Complex
I.P. Estate, New Delhi. 110002.
rep by its Secretary & Advisor (E & T) .. RR2 to 4 in W.P.22014/2002 RR 2

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&3 nil R4 in
W.P.22253/2002
RR2 and 3 nil and R5
in W.P.22580/2002 R6
in W.P. 24986,
24987/2002 RR2 nil
and R4 in
W.P.21824/02

5. The Southern Regional Office
All India Council for Technical
Education Shastri Bhavan,
26 Haddows Road,
Chennai-6
rep by the Regional Director ... R5 in W.P.22253 of 2002

The Secretary
Single Window Admissions
(Tamil NAdu Engineering Admissions 2002)
Anna University
Guindy, Chennai-32. ... R3 in W.P.24899/2002

The Secretary
Selection Committee for Admission
in to Tamilnadu Engineering Colleges
Anna University, Chennai-25. ... R2 in W.P.24986, 24987/2002.

Writ Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge dated 20.06.2002 made in WPMP No.29840 of 2002 in W.P.No.21578 of 2002
2. WPMP 29839/2002 in W.P.21577 of 2002
3. WPMP 29838/2002 in W.P.21576 of 2002
4. WPMP 30182/2002 in W.P.21824 of 2002
5. WPMP 30183/2002 in W.P.21825 of 2002
6. WPMP 30104/2002 in W.P.21826 of 2002
7. WPMP 29839/2002 in W.P.21577 of 2002
8. WPMP 29840/2002 in W.P.21578 of 2002 respectively

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Writ Petitions filed under Article 226 of the Constitution of India to issue a writ of declaration declaring that the provisions of Proviso to Sec 5 (ac) of the Anna University Act 1978 as amended by the amending Act unconstitutional unenforceable honest void afinitio in so far as the petitionr herein is concerned (W.P.21576/2002, 21873/2002, 24697, 24700, 24709, 24797, 32784/2002)

Writ of declaration declaring the proviso to section 5 (ac) of the anna University (Amendment) Act 2001 as ultra vires unconstitutional and void and further direct the 3rd respondent Anna University to grant

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provisional affiliation forthwith to the petitioner college from 2002-2003 and to include the petitioner college in the list of approved colleges for the purpose of single window Selection 2002-2003 (W.P.22253/2002)

Writ of declaration declaring the proviso to sec 5 (ac) of the Anna University Act 1978 (as inserted by the Tamil Nadu Adendment Act 26 of 2001) as unconstitutional and of initio void and in applicable to the petitioner (w.P.22580/2002, 24763/2002)

Tamil Nadu Act 26 of 2001 as is published in the Tamil Nadu Government Gazette Extra ordinaly No.865 part IV Section 2 dated 31.12.2001 as untra vires unconstitutional and void in so far as the petitioner is concerned (W.P.24613/2002, 24616/2002, 21824/2002)

Writ of Mandamus directing the 3rd respondent to consider the application of the petitioner dated 6.7.2002 for granting affiliation to the Petitioners college Viz SRR Engineering College at Padur Village, Chingleput Taluk, Kancheepuram District without insisting upon the premises of the State Government (W.P.24614/2002)

Writ of Mandamus directing the respondent to include the petitioner's College Viz SRR Engineering College at Padur Village Chingleput Taluk, Kancheepuram District in the list of Engineering Colleges Covered by the single window system of admission for the academic year 2002-2003 without insisting upon obtaining affiliation order from the third respondent. (W.P.No.24615/2002)

Writ of mandamus, directing the respondents herein to forthwith include VSB Engineering college of the petitioner having its Administrative officer at No. 204 Dharapuram Road, Kangeyam, Erode District 638 701 in the list of engineering college covered by the single window system of admission in the academic year 2002-2003 without insisting upon obtaining affiliation order from the 3rd respondent as a condition precedent. (WP.No.21577/2002)

2. directing the respondents herein to forthwith include Infant Jesus College of Engineering, Kilavallanadu Srivaikundam Taluk, Tuticorin District of the petitioner (WP.No.21875/2002)

3. directing the respondents herein to forthwith include Bharathi Dasan Engineering College, K. Bandara Palli Triupattur Taluk, Vellore District of the petitioner (WP.No.22568/2002)

4. directing the respondents to include the petitioner's college Viz Sri Jayaram Engineering College' at Jayaram Nagar Chellangkuppam cuddalore old Town in the list of Engineering College Covered by single window system of admission for the academic year 2002-2003 without insisting upon obtaining affiliation order from the third respondent (WP.No.24617/2002)

Writ of mandamus, directing the 3rd respondents to forthwith consider the application of the petitioner dated 14.6.2002 and pass orders,

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granting affiliation to enable V.S.B. Engineering college of the petitioner herein, having its administrative office at 204, Dharapuram Road, Kangeyam, Erode District 638701 to fulfil the conditions of approval granted by the AICTE regarding bringing the institution functional during the academic year 2002- 2003 without insisting upon permission of the state Government (WP.No.21578/2002)

directing the 3rd respondent to forthwith consider the application of the petitioner dated 17.6.2002 and pass orders granting affiliation to enable Infant Jesus college of Engineering, Kilavallanadu Srivaikundam Taluk, Tuticorin District of the petitioner (WP.No.21874/2002)

directing the 3rd respondent to forthwith consider the application of the petitioner dated 6.6.2002 and pass orders granting affiliation to enable Bharathi Dasan Engineering College, K. Bandara Palli Triupattur Taluk, Vellore District of the petitioner (WP.No.22567/2002)

directing the 3rd respondent to consider the application of the petitioner dated 6.7.2002 for granting affiliation to the petitioners college Viz Sri Jayaram Engineering College, at Jayaram Nagar, Chellangkuppam, Cuddalore old Town without insisting upon the permission of the state Government (WP.No.24618/2002)

directing the respondents herein to forthwith include Dhanish College of Engineering at Padappai Kanchipuram District the petitioner in the list of Engineering Colleges Covered by single window system of admission for the academic year 2002 - 2003 without insisting upon obtaining affiliation order from the 3rd respondent as a condition precedent. (WP.No.24698/2002)

directing the 3rd respondent to forthwith consider the application of the petitioner dated 8.7.2002 and pass orders granting affiliation to enable Dhanish College of Engineering at Padappai, Kancheepuram District of the petitioner to fulfil the condition of approval granted by ACC India Council for Technical Education regarding bringing the institution functional during the academic year 2002-03 without insisting upon permission of the state Government (WP.No.24699/2002)

directing the respondents herein to forthwith include Udayam Engineering College, Chaikanthargal Village (Nemili Village group) Sriperumbudur Taluk, kancheepuram Distric of the petitiont in the list of Engineering colleges covered by single window system of admission for the academic year 2002 - 2003 without insisting upon obtaining affiliation order from the 3rd respondent as a condition precedent. (WP.No.24702/2002)

directing the respondents herein to forthwith include P.B. College of Engineering at Irungattukkottai Sriperumbudur Tk, Kancheepuram District of the petitioner (WP.No.24710/2002)

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directing the 3rd respondent to grant affiliation to the petitioner's Engineering college Viz Udaya School of Engineering,Udaya Nagar, Vallamadi Junction, Kanyakumari District 629 204 for the academic year 2002 -2003 (WP.No.24762/2002)

directing the respondents to forthwith include SRI RAMAKUJAR Engineering college, Kalapakkam, Vandalur, Chennai 48 of the petitioner in the suit of Engineering colleges covered by single window system (WP.No.24799/2002)

directing the 2nd Respondent University to grant affiliation to the petitioner college viz ARJ College of Engineering and Technology at Thirumakottai Main Road, Edayanatham Village Mannargudi Taluk, Thiruvarur District from the academic year 2002-2003 (WP N O. 24900/02)

directing the third to consider the application of the petitioner dated 08.07.2002 for granting affiliation to the petitioner college viz Er Perumal Maanimegalai College of Engineering in Nallagamakottapalli Village Hosur Taluk, Dharmapuri District without insisting upon the premises of the state Government (WP 24976/02)

directing the respondents to include the petitioner college viz Er. Perumal Manimegalai College of Engineering in Nallagamakottapalli Village, Hosur Taluk, Dharmapuri District in the list of Engineering Colleges covers by the single Window System of admission for the academic year 2002-2003 without insisting upon obtaining affiliation order for the third respondent (WP 24977/02)

directing the respondents 1 to 5 to forthwith include the petitioners college Sri Ramakrishna Institute of Technology Coimbatore in the list of Engineering Colleges covered under Single Window System of Admission for the academic year 2002-2003 and allot/admit students in the petitioners college through Central Counselling (Single window) in compliance with the order passed by the AICTE dated 02.07.2002 (WP 24987/2002)

directing the respondents to include the petitioners college viz Prithivi Engineering College at Kuppandapalayam post, Avinashi Taluk, Coimbatore District in the list of Engineering Colleges covered by the Single Window System of admission for the academic eyar 2002-2003 without insisting upon obtaining affiliation order from the third respondent (WP 21825/02)

declaring that the proviso to Section 5 (ac) of Anna University Act 1978 as awarded by the Amendment Act NO. 26 of 2001 published in the Tamil Nadu Government Gazettee NO. 865 dated 31.12.2001 unconstitutional unenforceable non-gazettee void Abinitio in so far as the petitioner herein in concerned (WP 33045/02)

Writ of Mandamus directing the 3rd Respondent to forthwith consider the request of the petitioner for affiliation after obtaining the request of the petitioner dated 07.08.2002 to issue an application form for

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affiliation of S.N.S. College of Technology at Sathy Road, Vazhiyampalayam, Kalapatti, Coimbatore District for the academic year 2002-2003 without insisting upon permission of the State Government (WP 33046/02)

Writ of Certiorarified Mandamus, calling for the records of the first respondent ending with its Letter No CEP/RN1/GP/3 dated 18.06.2002 and quash the same and direct the first respondent to grant affiliation to the Asan Memorial College of Engineering and Technology, Oragadam Road, Keerapakam Thirukkazhikundram, TN for the academic year 2002-2003 (WP NO. 22014/02)

Writ of declaration, declaring that provisions of the proviso to Section 5 (ac) of Anna University Act 1978 as amended by the Amendment Act and the order of the 3rd Respondent in CEP/R/NI/GP/5 dated 18.06.2002 are unconstitutional unenforceable non-est, void abinitio in so far as the petitioner herein is concerned (WP 22566/02)

Writ of declaration, declaring that the proviso to Section 5(ac) of Anna University Act as inserted by the Tamil Nadu Act 26 of 2001 as is published in the Tamil nadu Government Gazette Extra-ordinary No. 865 Part IV Section 2 dated 31.12.2001 as ultra virus unconstitutional as void in so far as the petitioner is concerned (WP 24976/2002)

Direct the Anna University to grant affiliation of the petitioners College for the year 2002-2003 based on the order of the AICTE and without insisting upon the prior permission of the State Government (WP 24986/02)

direct the Anna University to grant affiliation to the petitioners College for the year 2002-2003 based on the orders of the AICTE and without insisting upon the prior Permission of the State Government (WP 21826/02)

directing the 3rd Respondent to forthwith consider the request of the petitioner for affiliation after obtaining the request of the petitioner dated 07.08.2002 to issue an application form for affiliation of V.P. Muthiah Pillai Meenakshi Ammal Engineering College for women at Vizhuppanoor Village, Krishnan Kovil, Srivilliputhur Taluk,, Virudhunagar District for the academic year 2002-2003 without insisting upon permission of the State Government (WP 32785/02)

Writ of Mandamus directing the 3rd respondent to forthwith consider the application of the petitioner and pass order granting affiliation to enabel udayam Engineering College, Chowkanthangal Village (Nemili village GrouP) Sriperum,badur Taluk, Kancheepuram District of the petitioner to fulfil the conditions of approval granted by All India Council for Technical Education regarding bringing the institution functional during the academic year 2002-2003 withour insisting upon permission of the State Government (WP.No.24701/2002)

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Granting affiliation to enable P.B.College of Engineering at Irungattukkottai, Sriperumbadur Taluk, Kancheepuram District of the petitioner (WP.No.24711 of 2002)

Granting affiliation to enable Sri Ramakujar Engineering Collect, Kolapakkam, Vandalur, Chennai - 48 of the petitioner (WP.No.24798/2002)

declaring the proviso to section 5(ac) of the Anna University(amendment) Act 2001 as ultravires unconstitutional and void, and further direct the 2nd respondent Anna Univerisity to grant affiliation forthwith to the Dr.G.U.Pop College of Engineering, Sanyerpuram from the Academic Year 2002-2003 (WP.No.34708/2002)

Writ of Mandamus, directing the respondents to treat the petitioner institute namely ARJ College of Engineering and Technology at Thirumakottai Main Road, Edayanatham Village, Mannargudi Taluk, Thiruvarur District as an approved institute for the purpose of admitting students in the academic year 2002-2003 for admission under single window admission system of Tamil Nadu Engineering Admission 2002 being conducted by the 3rd respondent (WP.No.24899/2002)

For Appellants in WA.Nos.1940 to 1945/02 and for Respondent-State in all the Writ Petitions : Mr.R.Viduthalai, Advocate General assisted by Mr.M.Sekar, Spl.G.P.

For Appellants in WA Nos.1952, 1953/2002 and for Respondents Anna University in all the Writ Petitions : Mr.Mani Sundar Gopal for Mr.G.M.Mani Associates

For Petitioners in W.P.Nos.21873 to 21875, 24697 to 24699, 24700 to 24702, 24709 to 24711, 33045, 33046, 32784, 32785, 21576 to 21578, 22566 to 22568 of 2002 : Mr.K.Doraisami, Senior Counsel for M/s Muthumani Doraisamy

For Petitioners in W.P.Nos.24613 to 24615 of 2002 : Mr.J.Rajaram

For Petitioners in W.P.Nos.24616 to 24618, 24975 to 24977, 21824 to 21826/2002 : Mr.V.Sanjeevi

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For Petitioners in W.P.Nos.24762 & 24763 of 2002 : Mr.P.L.Narayanan

For Petitioners in W.P.Nos.24797 to 24799 of 2002 : Mr.T.Meikandan

For Petitioners in W.P.Nos.24899 & 24900 of 2002 : Mr.R.Suresh Kumar

For Petitioners in W.P.Nos.24986, 24987/2002 : Mr.Satish Parasaran

For Petitioners in W.P.Nos.22014, 22580/2002 : Mr.Habibullah Basha, Sr. Counsel for Mr.Santosh Kumar

For Petitioner in W.P.No.22253/2002 : Mr.Isaac Mohanlal

For Petitioner in W.P.No.34708/2002 : Mr.K.Vijayakumar

For Madras University / 2nd Respondent in W.P.Nos.22014 of 2002 : Mr.A.V.Elango

For AICTE / 4th Respondent in W.P.Nos.22014 of 2002 : Mr.N.Muralikumaran, ACGSC

COMMON JUDGMENT

P.SATHASIVAM, J.

Since all these matters are interlinked; the question raised and the issue involved are one and the same; they are being disposed of by the following Common Judgment.

2. The above writ appeals are by the State against the interim orders/interim directions of the learned Single Judge. Since we are taking up the main writ petitions themselves for disposal, there is no need to go into the correctness or otherwise of the interim orders which are the subject matter of the writ appeals.

3. The writ petitioners/Educational Trusts are running Engineering Colleges, after getting proper approval from the All India

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Council for Technical Education ('AICTE' in short). In some of the Writ Petitions, proviso to Section 5(ac) of the Anna University Act, 1978, is challenged. Some of the petitioners are seeking direction to grant provisional affiliation while others seek direction for inclusion of their colleges in the Single Window System.

4. It is the common case of the petitioners that the educational institutions run by them applied to the AICTE in prescribed forms, with all enclosures and details, for establishing engineering colleges. It is also their case that after inspection made by the Expert Committee of AICTE and after satisfying the norms and standards, the AICTE has accorded approval to the petitioners' Trusts for establishment of engineering colleges with prescribed seats on a further condition that the admission shall be made through central counselling by the Government of Tamilnadu. It is also stated that the order of AICTE granting approval was communicated to Anna University with a request to complete the process of affiliation for facilitating admission. It is their further case that all of them satisfied the norms/condition prescribed by AICTE. After the approval given by the AICTE, the petitioners submitted applications to the Anna University for grant of affiliation.

According to the petitioners, they came to know that in view of the amendment to the Anna University Act, prior permission from the State Government is required for the colleges being affiliated to the University. As per the proviso to Section 5(ac) of the amended Act, no college shall be affiliated to the University unless the permission of the Government to establish such college has been obtained and terms and conditions, if any, of such permission have been complied with. According to them, the said amended provision is beyond the legislative competence of the State Government, repugnant to the Central Act, namely All India council for Technical Education Act, 1987 ('AICTE Act' in short), arbitrary and without jurisdiction.

It is the claim of the petitioners that so far as the professional colleges are concerned, the entire control of the institutions is vested only with All India Councils, such as All India Council for Technical Education, All India Medical Council, Dental Council of India, etc. Role of the University in respect of professional colleges is minimal and grant of affiliation is a matter of course. There is no justification on the part of the University to insist upon prior permission of the State Government for establishment of a college and for granting affiliation. They also submitted a separate application to the Secretary, Tamil Nadu Engineering Admissions, Anna University, for inclusion of the names of their engineering colleges for counselling under Single Window System in the brochure contemplated under Regulation 8 (2) of the AICTE (Norms and Guidelines for Fees and Guidelines for Admissions in Professional Colleges) Regulation, 1994.

5. Heard Mr.Habibullah Basha, learned senior counsel, Mr.K.Doraisami, learned senior counsel; Mr.V.Sanjeevi, Mr.R.Suresh Kumar, Mr.Issac Mohanlal, Mr.K.Vijayakumar, Mr.P.L.Narayanan and Mr.T.Meikandan for the petitioners; Mr.R.Viduthalai, learned Advocate General for the

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State; Mr.Mani Sankar Gopal for Anna University; Mr.N.Murali Kumaran for AICTE; and Mr.A.V.Elango for Madras University.

6. The main contentions of the learned senior counsel for the petitioners and other counsel are that the order/proceeding of the Anna University calling upon the petitioners to obtain permission from the State Government to establish their colleges, failing which affiliation will not be granted by the University, is illegal, arbitrary and violative of Articles 14 and 30(i) of the Constitution. It is also contended that the order of the University is contrary to AICTE Act and Regulations. Once the approval of AICTE has been obtained, there can be no further condition imposed by the University for the grant of affiliation. In such circumstances, the proviso to Section 5(ac) of the Anna University Act runs contrary to the dictum laid down by the Supreme Court in 1995 (4) SCC 104 (State of Tamil Nadu vs. Adhiyaman Educational and Research Institute and others) and 2000 (5) SCC 231 (Jaya Gokul Educational Trust vs. Commissioner and Secretary, Government of Higher Education Department, Kerala). Both these judgments enunciate that it is only the AICTE which has the authority to grant approval and that neither the State Government nor the University has the authority to give any approval or reject any application. According to them, the grant of approval to establish an engineering college is exclusively governed by the Central Act, namely AICTE Act, 1987 and the Regulations made thereunder and is referable to Entry 66, List-I of the VII-Schedule of the Constitution of India. The said Central Act, more in particular Section 10(k), and Regulation 8 of the Regulations made thereunder, occupied the field relating to grant of approval to an engineering college and that neither the State Government nor the University has any role in this regard. There is no power vested in the University or the State Government to enact laws which are repugnant to the Central Act, especially in regard to grant of approval to establish technical institutions after the 42nd amendment of the Constitution in 1976 and consequently the impugned provisions of the Anna University Act is liable to be struck down as ultra vires, unconstitutional and beyond the legislative competence of the State Legislature.

7. On the other hand, Mr.R.Viduthalai, learned Advocate General, submitted that even after the approval by AICTE, the permission or No Objection Certificate is to be granted by the State Government, since it has more role in the establishment of engineering colleges in the State of Tamil Nadu. According to him, the condition prescribed by the Anna University that before the grant of affiliation, permission of the State Government is mandatory, is perfectly in order and there is no ground for interference.

8. We have carefully considered the relevant materials and rival contentions.

9. It is not in dispute that the petitioners' Trusts have established engineering colleges either as minority institutions or as

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self-financing colleges. It is the claim of the petitioners that on proper application and satisfying all the conditions/requirements they obtained approval from AICTE. It is also their claim that all their institutions fully satisfied the terms and conditions contained in the Regulations of AICTE and inasmuch as they complied with the requirements as per the norms they are entitled to get their colleges affiliated to the University, namely Anna University. It is their further case that after obtaining letter of approval from AICTE they submitted applications to the Anna University for grant of affiliation and at that time they came to know that in view of the amendment to the Anna University Act prior permission from the State Government is required for the college being affiliated to the University. An amendment to the Anna University Act has been brought in by Tamil Nadu Act 26 of 2001, whereby the technical institutions (engineering colleges) in the State of Tamil Nadu have been brought under the purview of AICTE Act and as such Anna University is empowered to grant affiliation to the engineering colleges proposed to be started in the State. As per the proviso to Section 5(ac) of the Amended Act, prior permission of the State Government for establishment of the colleges is required for getting affiliation to the colleges. It is the claim of the petitioners that the said amended provision is beyond the legislative competence of the State Government, repugnant to the Central Act, namely AICTE Act, arbitrary and without jurisdiction.

10. The pith and substance of the stand taken by the petitioners is that insofar as as the professional colleges are concerned, the entire control of the institutions is vested only with All India Councils, such as All India Council for Technical Education, All India Medical Council, Dental Council of India, etc. The role of the University in respect of professional colleges is minimal and grant of affiliation is a matter of course. It is also their claim that there is no justification on the part of the Anna University to insist upon the prior permission of the State Government for establishment of the college for granting affiliation.

11. After coming into force of AICTE Act, 1987, the entire field relating to grant of approval for new technical institutions lies with the Council established under Section 3 of the Act. Chapter-III of the Act deals with the powers and functions of the Council. Section 10(k) of AICTE Act empowers the Council to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultancy with the agencies concerned. Though Regulation 8(4)(e)of AICTE Regulation insist that No Objection Certification from the State Government was mandatory with effect from 20.11.2002, on 28.11.2005 itself AICTE issued another Notification to the effect that No Objection Certificate from the concerned State Government is not mandatory. The provisions in the AICTE Act, 1987, which is a central Act and the Regulations made thereunder cover the entire field of establishment of an engineering college. It has been repeatedly held by this Court and the Hon'ble Supreme Court that the Central Act, more particularly Section 10 (k) of the Act and Regulation 8 of the Regulations made thereunder, occupied the field relating to grant of approval for establishing

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engineering colleges and that neither the State Government nor the University has any role in this regard. After the enactment and regulations, there is no power vested in the university or the State Government to enact laws which are repugnant to Central Act, especially to grant approval for establishing new technical institutions after the 42nd Amendment to the Constitution in 1976. As rightly argued, once approval from AICTE has been obtained, there can be no further conditions imposed by the Anna University for grant of affiliation and any such condition will be in conflict with the approval granted by AICTE and as such illegal and unsustainable in law. This has been laid down in the judgment of the Supreme Court reported in (1995) (4) SCC 104 (Adhiyaman's case) and followed by the Supreme Court in the judgment reported in (2000) 5 SCC 231 (Jaya Gokul's case).

12. In Adhiyaman's case, the question involved before the Supreme Court was whether, after coming into force of the AICTE Act, 1987, the State Government has power to grant and withdraw permission to start a technical institution as defined in the Central Act. After referring to various Entries, the Hon'ble Supreme Court has concluded thus:

> "30. A comparison of the Central Act and the University Act will show that as far as the institutions imparting technical education are concerned, there is a conflict between and overlapping of the functions of the Council and the University. Under Section 10 of the Central Act, it is the Council which is entrusted with the power, particularly, to allocate and disburse grants, to evolve suitable performance appraisal systems incorporating norms and mechanisms for maintaining accountability of the technical institutions, laying down norms and standards for courses, curricula, staff pattern, staff qualifications, assessment and examinations, fixing norms and guidelines for charging tuition fee and other fees, granting approval for starting new technical institutions or introducing new courses or programmes, to lay down norms or granting autonomy to technical institutions, providing guidelines for admission of students, inspecting or causing to inspect colleges, for withholding or discontinuing of grants in respect of courses and programmes, declaring institutions at various levels and types fit to receive grants, advising the Commission constituted under the Act for declaring technical educational institutions as deemed universities, setting up of National Board of Accreditation to periodically conduct evaluation on the basis of guidelines and standards specified and to make recommendations to it or to the Council or the Commission or other bodies under the Act regarding recognition or de-recognition of the institution or the programme conducted by it. Thus, so far as these matters are concerned, in the case of the institutes imparting technical education, it is not the University Act

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and the University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical colleges like the engineering colleges. As has been pointed out earlier, the Central Act has been enacted by Parliament under Entry 66 of List I to coordinate and determine the standards of technical institutions as well as under Entry 25 of List III. The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act."

13. In Jaya Gokul's case cited supra, the following conclusion of their Lordships in paragraphs 22 and 23 of the judgment is relevant.

"22. As held in T.N.case the Central Act of 1987 and in particular, Section 10(k) occupied the field relating to "grant of approvals" for establishing technical institutions and the provisions of the Central Act alone were to be complied with. So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular Statute 9(7), they merely required the University to obtain the "views" of the State Government. That could not be characterised as requiring the "approval" of the State Government. If, indeed, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of Section 10(k) of the AICTE Act, 1987 and would again be void. As pointed out in T.N.case there were enough provisions in the Central Act for consultation by the Council of AICTE with various agencies, including the State Governments and the universities concerned. The State-Level Committee and the Central Regional Committees contained various experts and State representatives. In case of difference of opinion as between the various consultees, AICTE would have to go by the view of the Central Task Force. These were sufficient safeguards for ascertaining the views of the State Governments and the universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but in T.N.case it was held that the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by AICTE. Therefore, the procedure for

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obtaining the affiliation and any conditions which could be imposed by the University, could not be inconsistent with the provisions of the Central Act. The University could not therefore, in any event have sought for 'approval' of the State Government.

23. Thus we hold, in the present case that there was no statutory requirement for obtaining the approval of the State Government and even if there was one, it would have been repugnant to the AICTE Act. The University Statute 9 (7) merely required that the "views" of the State Government be obtained before granting affiliation and this did not amount to obtaining "approval". If the University statute required "approval" it would have been repugnant to the AICTE Act. ...."

14. As rightly pointed out by the learned counsel for the petitioners, both these judgments have clearly laid down that it is only AICTE which has the authority to grant approval and neither the State Government nor the University has the authority to give approval or to reject any application and that, if there is any statutory requirement made under any law by the State Government or the University, it will be repugnant as it is incongruent with the Central Act, namely All India Council for Technical Education Act, 1986.

15. It is also useful to refer to a Division Bench decision of this Court reported in 2005 (2) CTC 182 (Bharathidasan University vs. Dhanalakshmi Srinivasan Educational and Charitable Trust). The batch of cases dealt with therein relates to the issue declining to consider and grant affiliation to the colleges proposing to establish B.Ed. Training Course by the Universities in the State of Tamil Nadu. By stating that Sections 14 and 15 of the National Council for Teacher Education Act, 1993 are similar to the one contained in Section 10(k) of AICTE Act or 10-A of the Indian Medical Council Act; and by pointing out that the judgments of the Supreme Court in Jaya Gokul's case (cited supra) and Thirumuruga Kirubananda Variar's case-[(1996) 3 SCC 15] would clearly apply to the NCTE Act; it was contended by the educational institutions that after approval by the Body under NCTE Act, no other permission or approval is required from any authority. The Division Bench, after considering the relevant provisions of NCTE Act, AICTE Act and Indian Medical Council Act, 1956, the judgments of the Supreme Court in Adhiyaman's case, Jaya Gokul's case and Thirumuruga Kirubananda Variar's case and after finding that Entry 66 of List-I, which is Union List and the same is reflecting in the preamble of NCTE Act, concluded that the provisions contained in the NCTE Act and the Regulations made thereunder regulate the establishment and administer the Teacher Training Institutes and that the Regional Committee alone is empowered to consider the claim for recognition even in a case where the State Government has refused to grant No Objection Certificate. The Bench was also of the view that if the Regional Committee is satisfied with regard to the fulfilment of requirements for grant of recognition, it

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is the duty of the examining body, namely Universities, to grant affiliation without insisting upon the institutions to produce the prior permission of the State Government based on the resolution of their Syndicate in accordance with their respective University Act and statutes and the Tamil Nadu Private Colleges (Regulation) Act as it is illegal and contrary to the law laid down by the Supreme Court. While finding so, the Division Bench directed the respective Universities to pass orders on the applications made by the respective institutions.

16. In 2006 (3) SCALE 675 = JT 2006 (4) SC 201 (State of Maharashtra vs. S.D.S.S.Mahavidyalaya), in respect of NCTE Act, the following conclusion of the Hon'ble Supreme Court in paragraphs 67 and 71 of the judgment is relevant:

> "67. In view of the fact, however, that according to us, the final authority lies with NCTE and we are supported in taking that view by various decisions of this Court, NCTE cannot be deprived of its authority or power in taking an appropriate decision under the Act irrespective of absence of No Objection Certificate by the State Government/Union Territory. Absence or non-production of NOC by the institution, therefore, was immaterial and irrelevant so far as the power of NCTE is concerned.
>
> .....
>
> 71. It is thus clear that the Central Government has considered the subject of Secondary Education and Higher Education at the national level. The Act of 1993 also requires Parliament to consider Teacher Education System 'throughout the country'. NCTE, therefore, in our opinion, is expected to deal with applications for establishing new B.Ed. colleges or allowing increase in intake capacity, keeping in view 1993 Act and planned and co-ordinated development of teacher-education system in the country. It is neither open to the State Government nor to a University to consider the local conditions or apply 'State policy' to refuse such permission. In fact, as held by this Court in cases referred to hereinabove, State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE. The action of the State Government, therefore, was contrary to law and has rightly been set aside by the High Court."

17. Before winding up, it will be useful to refer another Judgment of the Supreme Court which arises from AICTE Act. In 2005 (3) SCC 212 (Govt. of A.P. v. J.B. Educational Society), the Hon'ble Supreme Court considered Section 20 (3)(a)(i) of the Andhra Pradesh Act, 1982, with reference to Section 10 of the AICTE Act, 1987, and finally held that Section 20(3)(a)(i) is not in any way repugnant to Section 10 of the AICTE

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Act and it is constitutionally valid. The appeals before the Supreme Court were filed by the State of Andhra Pradesh, challenging the decision of the Division Bench of the High Court of Andhra Pradesh in Writ Appeal Nos.1571 of 1997, 84 of 1998 and 85 of 1998. The Division Bench partly confirmed the judgment of the learned single Judge holding that Section 20 (3)(a)(i) of the Andhra Pradesh Education Act, 1982 (in short "the A.P.Act") is void and inoperative and the State Government had no legislative competence to pass such a legislation as the State provision was in the field already occupied by the enactment made by Parliament, viz.., the All India Council for Technical Education Act, 1987 (AICTE Act). It was also held that in view of Section 10 of the AICTE Act with regard to establishment of technical institutions in general, the said special enactment legislated by Parliament would prevail over the A.P. Act to the extent of its repugnancy. The Writ Petitioners/private educational institutions wanted to establish engineering colleges in the State of Andhra Pradesh. They applied to the authorities under the AICTE Act and approval was granted to them for the academic year 1997-98 by the AICTE Council. The Writ Petitioners made applications under Section 20 of the Act for permission to establish the Institution. Permission was rejected on the ground that the writ petitioners had been seeking permission to establish colleges in the places where already there were a number of colleges and that the State Government was not satisfied about the educational needs of that locality. In that view of the matter, permission was declined. Aggrieved by the same, the Writ Petitions were filed.

The petitioners in the Writ Petitions contended that in view of Section 10 of the AICTE Act, no permission of the State Government under Section 20 of the Act was required as the field is completely covered by the AICTE Act. It was argued that once the approval was granted by the Council, the State Government cannot refuse permission on the ground that the proposed educational institution may not subserve the educational needs of the locality. Learned Counsel for the State, on the other hand, contended that Section 20 of the A.P. Act and Section 10 of the AICTE Act operate in different fields, there is no conflict between these provisions and that they are not repugnant to each other and the decision of the Division Bench is erroneous. It was also contended by the appellant's counsel that the State Legislature has legislative competence to pass the enactment and that, in view of Entry 25 of the Concurrent List, the State alone would be competent to say whether an Institution should be established in an area to serve the educational needs of that locality. After referring to the relevant provisions and the earlier judgments of the Supreme Court in T.M.A.Pai Foundation v. State of Karnataka ((2002) 8 SCC 481); Islamic Academy of Education vs. State of Karnataka (((2003) 6 SCC 697); and Jaya Gokul Educational Trust's case (cited supra); their Lordships have held as follows:-

> " 21. The educational needs of the locality are to be ascertained and determined by the State. Having regard to the Regulations framed under the AICTE Act, the representatives of the State have to be included in the ultimate decision-making process and having regard

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to the provisions of the Act, the writ petitioners would not in any way be prejudiced by such provisions in the A.P.Act. Moreover, the decision, if any, taken by the State authorities under Section 20(3)(a)(i) would be subject to judicial review and we do not think that the State could make any irrational decision about granting permission. Hence, we hold that Section 20(3)(a)(i) is not in any way repugnant to Section 10 of the AICTE Act and it is constitutionally valid"

18. If the said decision is applied, proviso to Section 5(ac) of the Anna University Act, 1978, cannot be held to be unconstitutional. We have already refereed to the earlier decisions of the Supreme Court in Adhiyaman's case, Jaya Gokul's case and S.D.S.S. Mahavidyalaya's case (cited supra), wherein it was specifically held that there was no statutory requirement for obtaining the approval of the State Government and even if there was one it would have been repugnant to the AICTE Act. In this regard, it is also relevant to the ultimate observation made by the three Judges Bench of the Supreme Court, ie., S.D.S.S. Mahavidyalaya's case. Though it was observed by the Bombay High Court that the provisions of Sections 82 and 83 of the Maharasthra University Act are null and void, in view of National Council For Teacher Training Act, 1993, in para No.77 of the Judgment, the Hon'ble Supreme Court has clarified the decision to the following effect:-

" ..... To us, it appears that what the High Court wanted to convey was that the provisions of Sections 82 and 83 would not apply to an institution covered by 1993 Act. As per the scheme of the Act, once recognition has been granted by the NCTE under Section 14(6) of the Act, every university ('examining body') is obliged to grant affiliation to such institution and sections 82 and 83 of the University Act do not apply to such cases. "

19. Coming to the two decisions of the Hon'ble Supreme Court viz., J.B. Educational Society's case (cited supra) and S.D.S.S. Mahavidyalaya's case (cited supra), it has to be borne in mind that Their Lordships of the Apex Court are unanimous on the point that when there is a conflict between the Parliament and State legislature and such conflict between the two enactments being irreconcilable, the parliamentary legislation would prevail notwithstanding the exclusive power of the State Legislature to make a law with respect to a matter enumerated in the State List. In that background, we gave our heedful attention to the issue before us. We see that J.B. Educational Society's case was decided by Their Lordships of the Supreme Court on 23rd February, 2005, and that, at the time of deciding the said case, Notification of the AICTE to the effect that NOC from the concerned State Government is not necessary was not at all there as it came into existence only on 28.11.2005, i.e., nearly 10 months after the pronouncement of the Judgment in the above case. Hence, by applying the

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latest decision rendered by a three Judges Bench of the Apex Court in S.D.S.S. Mahavidyalaya's case, we hold that once recognition has been granted by the AICTE, the University is obliged to grant affiliation to the Institutes concerned.

20. It is worthwhile to mention that AICTE Regulations 8(4)(e) notified whereby NOC from State Government was made mandatory with effect from 20.11.2002. However, it is not in dispute that on 28.11.2005 AICTE notified to the effect that NOC from the concerned State Government is not mandatory. The said Notification reads as under:-

" ALL INDIA COUNCIL FOR TECHNICAL EDUCATION, NEW DELHI

NOTIFICATION

NEW DELHI, NOVEMBER 28, 2005

PROCEDURE FOR PROCESSING OF PROPOSALS FOR INSTRODUCTION OF ADDITONAL COURSES/INCREASE/VARIATION IN INTAKE IN THE EXISTING TECHNICAL INSTITUTIONS

(A) The Regional Office shall in parallel, forward, within 15 days from the date of receipt of the proposal, one copy each of the proposals complete in all respects to the concerned State Govt./Union Territories and Affiliating University for obtaining their recommendations within 30 days.

(b) The State Govts. and the Affiliating Universities, while forwarding the recommendations, shall provide reasons and justification to substantiate their stand and do so by the date stipulated by the Council from time to time. The recommendations of the concerned State Government and the Affiliating Universities shall be taken into consideration, among various other relevant factors, before considering the proposals for introduction of new courses or programs and/or increase in intake and/or variation in the intake capacity. Obtaining No objection Certificate (NOC) by the Applicant Institutions from the concerned State Government is not mandatory. The Council shall have the right to overrule the recommendations of the State Government while deciding the matters of introduction of new courses or programs and/or increase in intake and/or variation in the intake capacity."

21. In the light of the above discussion, legal position and notification of AICTE dated 28.11.2005; we hold that proviso to Section-5 (ac) of the Anna University Act, 1978 would not apply to an Institution covered by AICTE Act, 1987. As per the scheme of the Act, once recognition has been granted by AICTE, the University is obliged to grant

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affiliation to such institution and proviso to Section 5(ac) does not apply to such cases. Writ Petitions are disposed of on the above terms. In view of the disposal of W.Ps., Writ Appeals filed by the Education Department against interim orders are dismissed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Gb/JI.

To
1. The Registrar, Anna University, S.P. Road, Chennai-25.
2. The Secretary, Tamilnadu Engineering Admissions 2002,
Anna University, Guindy, Chennai 600 025.
3. The Director, The Centre for Engineering Partnership
Centre for Affiliation, Anna University, Chennai 600 025.
4. The Secretary, State of Tamil Nadu, Higher Education, Secretariat,
Chennai 9.
5. The Director of Technical Education, Chennai 25.
6. The Secretary and Advisor [E & T] All India council for Technical
Education, Indira Gandhi Sports Complex, IP Estate, New Delhi 110 002.
7. The Regional Director, The Southern Regional Office,
All India council for Techinical Education, Shastri Bhavan,
26, Haddows Road, Chennai 6.
8. The Secretary, Single Window Admissions
[Tamil Nadu Engineerijng Admissions 2002],
Anna University, Guindy, Chennai 32.
9. The Secretary, Selection Committee for Admission into Tamil Nadu,
Engineering Colleges, Anna University, Chennai 25.
3 cc To Mr.N.Muralikumaran, ACGSC, SR.35688, 35685, 35687.
1 cc To Mr.V,Sanjeevi, Advocate, SR.35706
1 cc To M/S.Muthumani Doraisami, Advocate, SR.35804.
1 cc To M/S.G.M.Mani Associates, Advocate, SR.35760.

Writ Appeal Nos.1940,
1941, 1942, 1943,
1944, 1945, 1952,
1953 of 2002
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